IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N. KRISHNAN

FRIDAY, THE 17TH AUGUST 2007 / 26TH SRAVANA 1929

WP(C).No. 3763 of 2007(W)

OS. 24/2002 of MUNSIFF COURT, MAVELIKKARA
.....

WRIT PETITIONER/1ST COUNTER PETITIONER-2ND JUDGMENT DEBTOR:

K.K. MURALIMOHANAN PILLAI,
KOMATHU HOUSE, PALLICKAL EAST,
THEKKEKKARA P.O.

BY ADV. SRI. GEORGE VARGHESE (PERUMPALLIKUTTIYIL)
SRI. A.R. DILEEP
SMT. KAVITHA GANGADHARAN

RESPONDENT/PETITIONER:

SOMANATHAN PILLAI,
CHARUMMOOD POST OFFICE QUARTERS FROM CHARUVILA PUTHEN VEEDU, PALLICKAL MURI, NOORANADU VILLAGE.

BY ADV. SRI. RINNY STEPHEN
SMT. ASHA ELIZABETH MATHEW

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 3763 of 2007(W)

A P P E N D I X

PETITIONER'S EXHIBITS:

EXT. P1	**:**	**COPY OF PETITION IN E.P. NO. 111 OF 2005.**
EXT. P2	**:**	**COPY OF STATEMENT OF OBJECTION.**
EXT. P3	**:**	**COPY OF AFFIDAVIT FILED BY THE DECREE HOLDER.**
EXT. P4	**:**	**COPY OF AFFIDAVIT FILED BY THE PETITIONER.**
EXT. P5	**:**	**COPY OF ORDER DATED 06/01/2007 IN E.P. NO. 111 OF 2005 OF THE MUNSIFF COURT, MAVELIKKARA.**

// True Copy //

P.A. to Judge.

Acd

M.N. KRISHNAN, J.

W.P.(C)NO. 3763 OF 2007

DATED THIS THE 17th DAY OF AUGUST, 2007

JUDGMENT

This writ petition is preferred against the order of the Munsiff, Mavelikkara in E.P.No.111/05 in O.S.No.24/02. The writ petitioner is the second judgment debtor in Execution petition. As per the decree, he is liable to pay an amount of Rs.16,138/- with future interest. The decree holder approached the Court for execution of the decree by the request to order arrest and detention of the writ petition in prison.

2. Admittedly, the writ petitioner was an employee of Postal Service Department. It is also admitted that he is receiving a pension of Rs.4,000/-. According to him, on account of the pressing needs of various liabilities, he had to voluntarily quit the job and settle some of the loan transactions from the benefit, which he got under the Voluntary Retirement Scheme. He would also contend that there is no willful neglect or refusal to pay the amount. At the outset, I may like to point out the decree amount is not a fabulous amount. But an amount which one can afford to discharge. He is having pension of Rs.4,000/- and he would submit that his pressing needs have to be given predominance over his legal liability to discharge a decree debt.

These are all contentions without evidence to avoid payment, which is due to the persons.

3. Section 51 of the Civil Procedure Code contemplates that when a person has means or has had the means after the decree, one is liable to pay the amount.

4. According to the writ petitioner, he came into possession of money after Voluntary Retirement but he had spent it by discharging the loans to others. It is a matter which is within the petitioner's knowledge and that cannot be shifted to the decree holder. Therefore, the amount of Rs.4,000/- as pension coupled with the amount of Voluntary Retirement benefits is sufficient to hold that he has got the means to pay and the conduct of not paying it, shows the negligence on his part to pay the amount. I am not prepared to interfere with the finding of the Court below regarding means. No purpose will be served by simply sending him to civil prison and if he is prepared to pay an amount, an opportunity can be given. Therefore, the writ petition is directed to pay an amount of Rs.6,000/- (Rupees Six thousand only) on or before 20.9.2007 and to pay the balance amount in four equal monthly instalments commencing from 22.10.2007. If the writ petitioner makes default of the initial payment or default of the two consecutive instalments the benefit conferred upon him will stand automatically cancelled and the decree holder can request the Court

to arrest him and send to civil prison as prayed for in the Execution Petition.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE

Acd